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10/524,285	02/10/2005	William Henry Yost	PU020385	6380

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EXAMINER	
MOORTHY, ARAVIND K	
ART UNIT	**PAPER NUMBER**
2131	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/524,285	YOST, WILLIAM HENRY	
	Examiner	Art Unit	
	Aravind K. Moorthy	2131	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 November 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *10 February 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This is in response to the arguments filed on 20 November 2007.

2. Claims 1-17 are pending in the application.

3. Claims 1-17 have been rejected.

Response to Arguments

4. Applicant's arguments filed 20 November 2007 have been fully considered but they are not persuasive.

On page 5, the applicant argues that the Bosloy/Liao combination does not teach or suggest "ignoring IGMP Membership Queries for the at least one multicast data group issued by the router so as to cause the router to terminate a transmission of the unrequested multicast data to free up available bandwidth for the download of the requested data".

The examiner respectfully disagrees. Bosloy discloses that all of the membership verification set of groups are terminated or disconnected. Bosloy discloses that this enhances the efficiency with which the available bandwidth is utilized. Bosloy discloses that membership verification is terminated to provide enough bandwidth to allow other groups to be added.

On page 7, the applicant argues that Bosloy teaches away from the present principles as claimed. The applicant argues that given Bosloy's disparagement of the IGMP standards and their corresponding queries, and Bosloy's corresponding complete avoidance in using and/or otherwise relying upon such queries, the applicant asserts that the result of the cited combination of Bosloy and Liao would change the principle of operation of Bosloy.

The examiner respectfully disagrees. The question of whether a reference is analogous art is not relevant to whether that reference anticipates. A reference may be directed to an

entirely different problem than the one addressed by the inventor, or may be from an entirely different field of endeavor than that of the claimed invention, yet the reference is still anticipatory if it explicitly or inherently discloses every limitation recited in the claims. A reference is no less anticipatory if, after disclosing the invention, the reference then disparages it. The question whether a reference "teaches away" from the invention is inapplicable to an anticipation analysis. Celeritas Technologies Ltd. v. Rockwell International Corp., 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998) (The prior art was held to anticipate the claims even though it taught away from the claimed invention. "The fact that a modem with a single carrier data signal is shown to be less than optimal does not vitiate the fact that it is disclosed."). >See Upsher-Smith Labs. v. Pamlab, LLC, 412 F.3d 1319, 1323, 75 USPQ2d 1213, 1215 (Fed. Cir. 2005) (claimed composition that expressly excluded an ingredient held anticipated by reference composition that optionally included that same ingredient);< see also Atlas Powder Co. v. IRECO, Inc., 190 F.3d 1342, 1349, 51 USPQ2d 1943, 1948 (Fed. Cir. 1999) (Claimed composition was anticipated by prior art reference that inherently met claim limitation of "sufficient aeration" even though reference taught away from air entrapment or purposeful aeration.).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bosloy et al U.S. Patent No. 6,826,612 B1 in view of Receiver-initiated Group Membership Protocol (RGMP): a New Group Management Protocol for IP Multicasting (hereinafter Liao).

As to claim 1, Bosloy et al discloses a method for optimizing a download of requested data to an electronic data processing unit that is currently receiving unrequested multicast data through a router included in a network, the unrequested multicast data corresponding to at least one multicast data group, the method comprising:

sending Internet Group Management Protocol (IGMP) Leave Messages for the at least one multicast data group to the router [column 4, lines 50-61]; and

ignoring IGMP Membership Queries for the at least one multicast data group issued by the router so as to cause the router to terminate a transmission of the unrequested multicast data to free up available bandwidth for the download of the requested data [column 9, lines 46-56].

Bosloy et al does not teach that Internet Group Management Protocol (IGMP) is Internet Group Management Protocol (IGMP) V2.

Liao teaches the use and benefits of Internet Group Management Protocol (IGMP) V2 [page 2].

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Bosloy et al so that the Internet Group Management Protocol (IGMP) would have been Internet Group Management Protocol (IGMP) V2.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Bosloy et al by the teaching of Liao because Internet Group Management Protocol (IGMP) V2, based on IGMP v1, reduces leave latency by incorporating two type of query and two query intervals [page 2].

As to claims 2, 7 and 14, Bosloy et al teaches that the requested data comprises at least one of configuration data and program guide data [column 10, lines 34-50].

As to claims 3, 8 and 15, Bosloy et al teaches that the ignoring step comprises the step of preventing a transmission of an IGMP Membership Report to the router in response to the IGMP Membership Queries [column 6, lines 8-28].

As to claims 4, 9 and 16, Bosloy et al teaches the step of downloading the requested data while the transmission of the unrequested multicast data has been terminated [column 4, lines 12-29].

As to claims 5, 10 and 17, Bosloy et al teaches the step of sensing a receipt of any multicast data so as to identify group numbers of the multicast data [column 8, lines 26-44].

As to claim 6, Bosloy et al discloses in an network having a router, a system for optimizing a download of requested data occurring concurrently with a receipt of unrequested multicast data from the router, the unrequested multicast data corresponding to at least one multicast data group, the system comprising:

> an electronic data processing unit for sending Internet Group Management Protocol (IGMP) Leave Group Messages for the at least one multicast data group to the router [column 4, lines 50-61], and for ignoring IGMP Membership Queries for the at least one multicast data group issued by the router so as to cause the router to terminate a transmission of the unrequested multicast data to free up available bandwidth for the download of the requested data [column 9, lines 46-56].

Bosloy et al does not teach that Internet Group Management Protocol (IGMP) is Internet Group Management Protocol (IGMP) V2.

Liao teaches the use and benefits of Internet Group Management Protocol (IGMP) V2 [page 2].

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Bosloy et al so that the Internet Group Management Protocol (IGMP) would have been Internet Group Management Protocol (IGMP) V2.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Bosloy et al by the teaching of Liao because Internet

Group Management Protocol (IGMP) V2, based on IGMP v1, reduces leave latency by incorporating two type of query and two query intervals [page 2].

As to claim 11, Bosloy et al teaches a modem connected in between the electronic data processing unit and the router for exchanging information there between [column 3, lines 46-56].

As to claim 12, Bosloy et al teaches that the modem is adapted for use with Asymmetrical Digital Subscriber Line (ADSL) [column 3, lines 46-56].

As to claim 13, Bosloy et al discloses a program storage device readable by machine, tangibly embodying a program of instructions executable by the machine to perform method steps for optimizing a download of requested data to an electronic data processing unit that is currently receiving unrequested multicast data through a router included in a network, the unrequested multicast data corresponding to at least one multicast data group, the method steps comprising:

> sending Internet Group Management Protocol (IGMP) Leave Messages for the at least one multicast data group to the router [column 4, lines 50-61]; and
>
> ignoring IGMP Membership Queries for the at least one multicast data group issued by the router so as to cause the router to terminate a transmission of the unrequested multicast data to free up available bandwidth for the download of the requested data [column 9, lines 46-56].

Bosloy et al does not teach that Internet Group Management Protocol (IGMP) is Internet Group Management Protocol (IGMP) V2.

Liao teaches the use and benefits of Internet Group Management Protocol (IGMP) V2 [page 2].

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Bosloy et al so that the Internet Group Management Protocol (IGMP) would have been Internet Group Management Protocol (IGMP) V2.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Bosloy et al by the teaching of Liao because Internet Group Management Protocol (IGMP) V2, based on IGMP v1, reduces leave latency by incorporating two type of query and two query intervals [page 2].

Conclusion

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aravind K. Moorthy whose telephone number is 571-272-3793. The examiner can normally be reached on Monday-Friday, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz R. Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Aravind K Moorthy
January 26, 2008

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